

**BEFORE M. K. MAHAJAN, MEMBER, INDUSTRIAL COURT,
MAHARASHTRA, MUMBAI**

COMPLAINT (ULP) NO. 350 OF 2015

Akhil Bhartiya Kamagar Sanghatana
V/s.
Shri. Mankeshwar Mechanical Works
& Others

...Complainant.
...Respondents.

In the matter of application for interim relief.

Coram : M. K. Mahajan, Member.
Appearances : Shri. Sunil Patil, Adv. for complainant.
: Shri. G. D. Talreja, adv. for respondents.

ORDER BELOW EXH. U-2
(Dictated and declared in open court on : 21/3/2016)

1) This is an application for interim relief u/s 30(2) of the MRTU & PULP Act, 1971. Complainant union filed the complaint u/s. 9 & 10 of Schedule IV of the MRTU and PULP Act. The respondent no.1 is dealing with mechanical and ship repair works and doing their business since last 50 years. The respondents have exploited their workmen to maximum extent. Earlier Sarva Shramik Sanghatana Union has filed the Complaint (ULP) No. 429 of 2012 in which order dtd. 5/4/2013 was passed, and complaint was dismissed. That order was challenged in Hon'ble High Court in Writ Petition No. 2626 of 2014. After 27/6/2014 the concerned employees were not allowed to report their duties. So the complaint came to be filed.

2) Respondent filed affidavit in reply. The preliminary objection is that, complaint is not maintainable on the ground of

res-judicata as the matter in issue is finally decided in Complaint (ULP) No. 429 of 2012. There is no stay granted by Hon'ble High Court to the order of this court in that complaint. There is no master and servant relationship between the respondent no.1 and the concerned employees. There is delay of more than one year after the cause of action dtd. 27/6/2014.

3) Heard Adv. Sunil Patil for the complainant and Adv. G. D.Talreja for the respondent.

4) Following points arise for my determination and my findings thereon are as under :

POINTS

FINDINGS

- | | |
|--|----------------|
| 1) Whether the complainant has prima facie case ? | No. |
| 2) Whether balance of convenience lies in favour of complainant? | No |
| 3) What order? | As given below |

REASONS

AS TO POINT NO.1 & 2:

5) The complaint reveal that the workman has resigned the earlier union and became the member of present union. It is further reveal that from 27/6/2014 the concerned employees were not allowed to report the duty. There is correspondence vide letter dtd. 5/7/2014, 21/7/2014 and 5/11/2014. It is indisputable fact that earlier Complaint (ULP) No. 429 of 2012 was dismissed on 5/4/2013. Although that order was challenged there is no stay. So

the findings of this court in that case are relevant and important in this case. In that case relying on the case *D. Sarkar alias Dipak Sarkar V/s. State of Bihar -1997-(45)-BLJR page -868 and Tulsidas Khimji V/s. F. Jeejeebhoy - 1960 AIR-1961 Bom. Page no. 277.* It was prima facie held that, “the Central Government is the appropriate government.” So complaint is not tenable on that ground. It was further held that, the appointment of the concerned employees were also disputed and therefore on the ground dispute of employer-employee relationship it was held that complaint is not tenable.

6) The similar facts are pleaded by the respondent in this case. In absence of stay to the order dtd. 24/6/2014 this court cannot take the different view on the similar facts, circumstances and on the similar documents filed in both of the cases. Whether the documents on record are legal one and issued by the respondents or whether they are fabricated one as alleged by respondent, the court cannot opined at this prima facie case as the offence was registered against the concerned employees in respect of making forged documents.

7) In the case of *Cipla Ltd. V/s. Maharashtra General Kamagar Union- 2001- I- CLR – 754* and *Quadricon Pvt. Ltd. & Ors V/s. Maxi D’souza and Ors- 2004-III-CLR-P. 530.* In the first case of Cipla Ltd. it is held that, Industrial Court cannot decide the issue of workman under MRTU and PULP Act. In second case it was observation relying on Cipla Ltd. and Kalyani Steels that Industrial

Court required to consider if employer-employee relationship between parties was unquestionable and that having been not done, interim relief application is remanded for fresh decision.

8) In respect of appropriate government number of citation were relied on by Adv. Sunil Patil. I have already held in earlier complaint that central government is appropriate government for deciding the dispute between same parties. In view of that there is no need to refer those citation on appropriate government. In the case of *Akhil Bhartiya Shramik Kamagar Union V/s. Buildtech Constructions and Ors., in W. P. No. 2709 of 2003.* Our parent High Court observed in paragraph no. 12

“On the principles expounded by the Apex Court referred to above, I find no difficulty in accepting the submission canvassed on behalf of the petitioner that mere statement of denial of employer-employee relationship made in the written statement or reply affidavit by the employer, by itself will not be sufficient to hold that continuous issue has been raised. In the present case it is not in dispute that the petitioners had filed application before the lower court praying that the respondents be directed to produce certain documents. The fact as to whether the stand taken by the respondent in the reply affidavit relating to relationship of the parties is genuine and malafide, could very well be ascertained from the said documents mentioned by the respondents, if the same were to be produced before the court below. However, it is not in dispute that the said application was remained undecided before the Industrial Court, which obviously is inappropriate. To find out the bonafide of the stand taken by the respondents, not only production of the said documents referred to in the said application was imperative, and if the respondents were to contend that no such documents are available, it will be open to insist upon examination of witnesses or cross examine the applicant who has stated on affidavit about the relationship between the parties, so as to confront him with the record produced before the court or in relation to the stand of unavailability of the record. So as to find out the bonafide of the stand so taken in the reply affidavit filed on behalf of the respondents. On the basis of such evidence, if the court was to find that stand was not bonafide, then obviously, such a stand will have to be discarded and that adjudication would be one of jurisdictional fact which is

required to be answered at the stage of the proceedings.”

9) In view of this judgment there is no need to decide the preliminary objection only on the basis of affidavit as held in case of *Indian Seamless Metal Tubes Limited V/s. Sunil Rambhau Iwale and Ors- 2002 (1) ALLMR- 870.* Adv. Talreja placed the reliance on the case of *Bhartiya Kamagar Sena V/s. UDHE India Ltd and Anr.- 2007 (6) Mh. L. J. page no. 185.* It is laid down that,

“Merely because the contract is in existence for very long time cannot be taken as a clue to decide that the contract was not genuine. What has to be seen is the method and manner in which the work is done by the workmen and the control which is exercised by the company over the workmen.”

10) Looking to the fact that the maintainability of the complaint has been challenged on the ground of appropriate government is Central Government, there is no employer-employee relationship, having regard to the fact of earlier decision of this court, and matter is filed after one year, there is no prima facie case to grant the relief. Since 27/6/2014 the concerned employees are not allowed to report to the work. So reliefs directing the respondent to allow concerned employees to report the duties and to grant the wages are wholly unwarranted at this stage. So balance of convenience is also against the complainant. Hence the order.

ORDER

Application is rejected.

Date- 21/3/2016

SSA

Sd/-
(M.K. Mahajan)
Member
Industrial Court, Mumbai.